REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PEOPLE OF THE PHILIPPINES,
Petitioner,

- versus -

BONIFACIO CUSTODIO DEL ROSARIO,
Respondent.

CTA EB Crim. No. 148
(CTA Crim. Case No. O-717)

Present:

RINGPIS-LIBAN, *P.J.,*
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, and
ANGELES, ***JJ.***

Promulgated:

JUL 03 2026

x- x

DECISION

REYES-FAJARDO, *J.*:

We resolve the Petition for Review[1] filed on May 16, 2024, challenging the Resolutions dated February 19, 2024[2] and April 3, 2024[3] in CTA Crim. Case No. O-717, whereby the Court of Tax Appeals First Division (Court in Division) dismissed CTA Crim. Case No. O-717 instituted against Bonifacio Custodio Del Rosario, for prescription of tax offense under Section 281 of the 1997 National Internal Revenue Code (NIRC), as amended.

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1 *Rollo*, pp. 6 - 14.
2 *Id.*, pp. 19 - 24.
3 *Id.*, pp. 25 - 27.

FACTS

On April 29, 2019, an Information[4] was filed against respondent Bonifacio Custodio Del Rosario, docketed as CTA Crim. Case No. O-717, for Willful Failure to Pay Tax under Section 255 in relation to Sections 253 and 256 of the NIRC, as amended. The accusatory portion of which reads:

> That on or about June 2014, in Quezon City, and within the jurisdiction of this Honorable Court, accused **BONIFACIO CUSTODIO DEL ROSARIO**, required by law to file income tax return and to pay the corresponding tax, did then and there willfully, unlawfully and feloniously fail to pay **Value - Added Tax (VAT)** for taxable year 2010 in the amount of Nine Million Eight Hundred Seventy Seven Thousand One Hundred Fifty Five Pesos and Twenty Eight Centavos (P9,877,155.28), exclusive of surcharges and interests, corresponding to the four (4) quarters of taxable year 2010, despite receipt of final assessment notice, including prior and post notices and final demands to pay the last being in the form of final notice before seizure issued on June 10, 2014, to the damage and prejudice of the government.
>
> **CONTRARY TO LAW.**

On February 19, 2024, after a review of the Information and the attached supporting documents, the Court in Division rendered the assailed Resolution, the *fallo* of which states:

> **WHEREFORE**, premises considered, CTA Crim. Case No. O-717 is hereby **WITHDRAWN** from the archives and accordingly **DISMISSED** by reason of prescription of the offense charged.
>
> The Alias Warrant of Arrest issued against accused is hereby **RECALLED and SET ASIDE**.
>
> **SO ORDERED.**

On March 20, 2024, petitioner filed a Motion for Reconsideration with Leave of Court and Entry of Appearance (Re: Resolution dated 19 February 2024).

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4 Docket (CTA Crim. Case No. O-717), p. 8.

On April 3, 2024, the Court in Division denied[5] said motion for being filed out of time and for lack of merit, thus:

> **WHEREFORE**, premises considered, plaintiff's **Motion for Reconsideration with Leave of Court (Re: Resolution dated 19 February 2024)** is **DENIED** for being filed out of time and for lack of merit.
>
> The **Entry of Appearance** of plaintiff's special prosecutors from the Legal Division of the Bureau of Internal Revenue Region 6, namely: Atty. Ramon B. Lorenzo and Atty. Myrna R. Santelices, is **NOTED**.

Hence, this Petition for Review.

ARGUMENTS

Petitioner ascribes flaw in the Court in Division's utilization of *Emilio E. Lim, Sr. and Antonia Sun Lim v. Court of Appeals and People of the Philippines (Lim)*[6] as basis of dismissal of the criminal charges against respondent. Specifically, petitioner asserts that the dictum in *Lim* that the running of the five (5)-year prescriptive period is tolled only upon the filing of Information in court is misplaced.

According to petitioner, the filing of the criminal complaint for preliminary investigation with the Department of Justice (DOJ) on September 27, 2018, interrupted the running of the prescriptive period for the tax offense, following the pronouncements in *Panaguiton, Jr. v. Department of Justice, et al.* (*Panaquiton, Jr.*),[7] and *People v. Pangilinan (Pangilinan)*,[8] among others.

Respondent failed to file a comment on petitioner's assertions.[9]

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5 *Rollo*, pp. 49 to 51.
6 G.R. Nos. L-48134-37, October 18, 1990.
7 G.R. No. 167571, November 25, 2008.
8 G.R. No. 152662, June 13, 2012.
9 Records Verification [Report] dated September 16, 2024, issued by the Court of Tax Appeals - Judicial Records Division (CTA-JRD). *Rollo*, p. 30.

ISSUE

Did the Court in Division err in dismissing CTA Crim. Case No. O-717 on the ground of prescription?

RULING

We deny the Petition.

It bears noting that petitioner filed a Motion for Reconsideration beyond the reglementary period, as found by the Court in Division.[10]

The timely filing of a motion for reconsideration or new trial before the CTA Division is a mandatory prerequisite to an appeal to the CTA *En Banc*.[11]

At any rate, even setting aside this procedural infirmity, the petition remains bereft of merit.

We discuss.

Section 281 of the NIRC, as amended, provides that criminal infractions under the Code shall prescribe after five (5) years, reckoned from the commission of tax offense, if known, and if not known, from discovery thereof *and* institution of judicial proceedings for investigation and punishment. Prescription thereof shall halt, upon institution of proceedings against the persons guilty thereof:

> SECTION 281. *Prescription for Violations of any Provision of this Code.* -All violations of any provision of this Code shall prescribe after five (5) years.
>
> Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not

10 *Rollo*, p. 26.

11 See *Commissioner of Internal Revenue v. Script2010, Inc.*, G.R. No. 266641, February 17, 2025.

> known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment.
>
> The prescription shall be interrupted when proceedings are instituted against the guilty persons and shall begin to run again if the proceedings are dismissed for reasons not constituting jeopardy...

Notably, Section 281 of the NIRC, as amended, is a replica of Section 354 of the 1939 NIRC. *Lim* interpreted Section 354 of the 1939 NIRC, as follows:

> The Solicitor General stresses that Section 354 speaks not only of discovery of the fraud but also institution of judicial proceedings. **Note the conjunctive word "and" between the phrases "the discovery thereof" and "the institution of judicial proceedings for its investigation and proceedings." In other words, in addition to the fact of discovery, there must be a judicial proceeding for the investigation and punishment of the tax offense before the five-year limiting period begins to run.** It was on September 1, 1969 that the offenses subject of Criminal Cases Nos. 1790 and 1791 were indorsed to the Fiscal's Office for preliminary investigation. Inasmuch as a preliminary investigation is a proceeding for investigation and punishment of a crime, it was only on September 1, 1969 that the prescriptive period commenced...
>
> As Section 354 stands in the statute book (and to this day it has remained unchanged) it would indeed seem that tax cases, such as the present ones, are practically imprescriptible for as long as the period from the discovery *and* institution of judicial proceedings for its investigation and punishment, *up to* the filing of the information in court does not exceed five (5) years...
>
> Unless amended by the legislature, Section 354 stays in the Tax Code as it was written during the days of the Commonwealth. And as it is, must be applied regardless of its apparent one-sidedness in favor of the Government. In criminal cases, statutes of limitations are acts of grace, a surrendering by the sovereign of its right to prosecute. They receive a strict construction in favor of the Government and limitations in such cases will not be presumed in the absence of clear legislation.[12]

Indeed, *Lim* ordained that tax offenses are imprescriptible so long as the period from its discovery and institution of judicial

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12 Emphasis supplied.

proceedings for investigation and punishment, up to the filing of information in court *do not exceed five (5) years*. Conversely, if the period from the discovery and institution of judicial proceedings for its investigation up to the filing of the information in court exceeds five (5) years, then the government's right to file criminal actions against errant persons would be barred by prescription.

On the strength of the above pronouncements, CTA Crim. Case No. O-717 was correctly dismissed on the ground of prescription. As found by the Court in Division, the offense of willful failure to pay tax arises only upon receipt of the FLD/FAN and the taxpayer's failure or refusal to pay within the period prescribed by law. Here, however, the records are bereft of any showing as to when respondent actually received the FLD/FAN. Even assuming that the FLD/FAN was served on January 24, 2014, the date of its issuance, the assessment would have attained finality on February 23, 2014. Counting five years therefrom, the period to institute the criminal action expired on February 23, 2019. Thus, the Information filed only on April 29, 2019, was beyond the prescriptive period.

We are mindful of the Supreme Court's ruling in *People v. Consebido*[13], which was promulgated on April 2, 2025, where the Supreme Court adopted a unified rule: the running of the prescriptive period shall be tolled by the filing of the criminal complaint before the prosecution office. However, this new doctrine shall be applied prospectively, hence inapplicable to this case, *viz.*:

> **With this dilemma, the Court takes this opportunity to pronounce that the filing of the complaint before the prosecution office and the conduct of the summary investigation should toll the running of the prescriptive period.** While it is ideal that all cases are resolved promptly, the reality is that this is not done at all times, whether for valid reasons or not. The offended party, which is primarily the State, should not be prejudiced by any delay in the conduct of the preliminary investigation even for cases covered by summary procedure. The Court reiterates its reasoning in *People v. Olarte* that *"it is unjust to deprive the injured party of the right to obtain vindication on account of delays that are not under his control. All that the victim of the offense may do on his part to initiate the prosecution is to file the requisite complaint."*

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13 G.R. No. 258563, April 2, 2025.

In addition, Chief Justice Gesmundo extensively discussed the history of the pertinent laws and rules on the filing of complaint or information for criminal cases and the conduct of preliminary investigation in his Reflections. Based on an examination of these laws and rules, he aptly surmised:

> [T]he use of the phrase "complaint or information" in Article 9166 of the Revised Penal Code, Section 11 of the 1991 Revised Rules on Summary Procedure, and Rule II, Subsection B, Section 1 of [the] 2022 Rules on Expedited Procedures in the First Level Courts, for purposes of the tolling of the prescriptive period of offenses, must henceforth, be construed to refer to the filing of the complaint or information before the prosecution office."

But in line with the time-honored principle that the interpretation that is most favorable to the accused should be adopted with respect to laws on prescription of crimes, this new rule shall apply prospectively.[14]

In *precis*, the Court in Division did not err in finding that petitioner's right to file the Information with the Court had prescribed, thereby warranting dismissal of the case.

WHEREFORE, the Petition for Review, filed on May 16, 2024, is **DENIED**, for lack of merit. The Resolutions dated February 19, 2024 and April 3, 2024 in CTA Crim. Case No. O-717, are hereby **AFFIRMED**.

SO ORDERED.

Marian Ivy F. Reyes-Fajardo

MARIAN IVY F. REYES-FAJARDO
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice

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14 Emphasis ours. Citations omitted.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice